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**FEDERAL ELECTIONS COMMISSION**  
Office of General Counsel  
999 E Street, NW  
Washington, D.C. 20463

2011 NOV -2 PM 12:20

OFFICE OF GENERAL  
COUNSEL

DAVID KRIKORIAN,

Complainant,

v.

MUR No. 6494

REP. JEAN SCHMIDT, et al.,

Respondents.

**RESPONSE TO COMPLAINT**

Respondents Rep. Jean Schmidt, Schmidt for Congress Committee, Joseph Braun, Phillip Greenberg and Peter Schmidt submit that the allegations against them should be dismissed because:

1. TCA's payments for the legal fees at issue were not contributions;
2. Respondents had no knowledge of any contributions from TCA; and,
3. Respondents Joseph Braun and Peter Schmidt are not proper parties.

**BACKGROUND FACTS**

**A. Events leading up to Ohio Elections Commission Filings**

Prior to the 2008 election cycle, David Krikorian met Jean Schmidt in her congressional offices. David Krikorian demanded that Jean Schmidt become a co-sponsor of a resolution condemning the government of Turkey and branding as "genocide" the war crimes committed in the Ottoman Empire a century ago. When Rep. Schmidt declined to immediately become a sponsor of such a resolution and said she would need to study the issue first, Mr. Krikorian began screaming at her, calling her names, and threatening to ruin her politically.

Jean Schmidt later learned that David Krikorian is a member of a hate group, the Armenian National Committee of America ("ANCA"), that uses means fair or foul to stir up hatred against the government of Turkey and persons of Turkish ancestry.

After Mr. Krikorian's unpleasant meeting with Jean Schmidt, David Krikorian decided to run against Jean Schmidt as an independent in the 2008 election for the second congressional district of Ohio. On the weekend before the November 2008 general election, David Krikorian distributed a flyer with an attached letter to voters in Jean Schmidt's congressional district falsely accusing Jean Schmidt of taking bribes from the Turkish government and its agents.

Jean Schmidt was outraged at this malicious attack against her reputation and integrity. The Turkish Coalition of America ("TCA") was also outraged.

**B. Ohio Elections Commission Filings**

Ohio Rev. Code §3517.21(B)(10) makes it illegal for any person to:

"Post, publish, circulate, distribute, or otherwise disseminate a false statement concerning a candidate, either knowing the same to be false or with reckless disregard of whether it was false or not, if the statement is designed to promote the election, nomination, or defeat of the candidate."

The Ohio Elections Commission ("OEC") is the administrative body that hears Complaints alleging false statements in violation of Ohio Rev. Code §3517.21(B). This statute and the authority exercised by the OEC was upheld in *Pestak v. Ohio Elections Commission* (6<sup>th</sup> Cir. 1994), 926 F.2d 573.

It is not necessary for a candidate or the person who is the subject of a knowingly false statement to be the complainant in an OEC Ohio Rev. Code §3517.21(B) Complaint. Ohio Rev. Code §3517.153 permits such complaints to be made by "any person". Nonetheless, Jean Schmidt decided to become the Complainant in the OEC Cases.

It was also not necessary for Jean Schmidt to remain a candidate or an officeholder in order for an OEC complaint to go forward regarding false statements against her in a prior election. False statements by or against persons who lose elections and leave politics are commonly brought before the Ohio Elections Commission.

TCA lawyers did not represent Jean Schmidt until 2009 and TCA did not make any payments of legal fees for Jean Schmidt until 2009<sup>1</sup>. Joseph Braun was never treasurer of Jean Schmidt's campaign committee and Peter Schmidt has not been treasurer since 2008. So it is unclear why Joseph Braun and Peter Schmidt are named in the Complaint.

In 2009, TCA lawyers began to pay for the representation before the OEC through Turkish American Legal Defense Fund (TALDF), which is now known to be a dba for TCA. Respondents were not adequately informed of the nature of this arrangement, as is indicated in the Report of the House Ethics Committee (hereinafter the "Report") referenced in the Complaint herein. See Report pp. 3, 18. "[I]t appears that, based on the evidence examined by the [House Ethics Committee], *unbeknownst to Representative Schmidt* . . . Schmidt's lawyers . . . were not planning to send her a bill for attorneys fees at the conclusion of the matter . . . ." Report, p. 3. Jean Schmidt expected to pay for her representation once she received a bill, while TCA assumed it would not send a bill since it ordinarily does not do so in other cases.

In 2009, Jean Schmidt filed two complaints against David Krikorian before the Ohio Elections Commission ("OEC") regarding those false statements, pursuant to R.C. 3517.21(B)(10). Copies of these OEC Complaints are attached hereto as Exhibits A and B.

Although Jean Schmidt used her campaign committee address in her OEC Complaints, in fact she was the only Complainant. David Krikorian is well aware of this since his notices of

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<sup>1</sup> This is precisely why the House Ethics Committee did not require Rep Schmidt to amend her 2008 financial disclosure forms.

Appeal from the OEC findings against him identified Jean Schmidt as the sole OEC Complainant and, in the certificates of service, list the attorneys Brey, Fein and Saltzman as representing only Jean Schmidt with no reference to her campaign committee. See Exhibits C and D attached hereto. Jean Schmidt's campaign committee was not a party to the OEC proceedings or to any of the other litigation matters involving attorneys paid for by TCA.

When Jean Schmidt's campaign staff were deposed by Krikorian in connection with the OEC matters, one of Jean Schmidt's attorneys indicated that he was also acting as counsel to Jean Schmidt's campaign committee and as counsel to these witnesses as agents of Jean Schmidt's campaign committee in connection with their depositions. This allowed counsel to defend them during the depositions and to have attorney-client privileged communications with them. However, there was no charge for this nominal representation.

On October 1, 2009, after two full days of trial in the joint cases of *Schmidt v. Krikorian*, Case Nos. 2009E-003 and 2009E-012 (collectively, "Election Commission Cases"), the Ohio Elections Commission ("OEC") found by clear and convincing evidence that Krikorian had violated R.C. 3517.21 by knowingly lying about Schmidt in his effort to defeat her in the election<sup>2</sup>. The OEC voted to issue letters of reprimand to Krikorian for making these false statements of fact. See the attachments to the attached Exhibits C & D.

David Krikorian appealed the OEC's decisions to the Franklin County (Ohio) Common Pleas Court in *Jean Schmidt v. David Krikorian* Case Nos. 09-CVF-11-11707 and 09-CVF-11-11709. Exhibits C & D. The appeals were dismissed, making the OEC's rulings final judgments.

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<sup>2</sup> The OEC hearing was bifurcated and after these findings in Jean Schmidt's favor, she voluntarily withdrew, *without prejudice*, a number of other false statement allegations that had not yet been tried.

**C. Federal Court Litigation**

David Krikorian also attempted to collaterally attack the OEC's decisions in the United States District Court for the Southern District of Ohio in *Krikorian v. Ohio Elections Commission*, Case No. 1:10-cv-00103-SJD (2010) before Judge Susan Dlott. David Krikorian did not name Jean Schmidt in the federal court litigation. Thus, Jean Schmidt filed as an amicus curiae to urge the federal court to dismiss David Krikorian's federal complaint as an improper collateral attack on the OEC's finding that he lied about her. The federal court agreed and dismissed Krikorian's federal lawsuit.

Jean Schmidt's campaign committee was not represented and did not appear in the federal lawsuit. TCA paid for lawyers who filed the amicus briefs in the federal court action on behalf of Jean Schmidt. If Jean Schmidt had declined to appear as an amicus, TCA could still have filed the same amicus briefs under its own name.

**D. Defamation Lawsuit**

Even after Schmidt had filed her OEC Complaints against Krikorian, he kept making false statements publicly accusing Schmidt of taking money from the Turkish government or its agents. So, on June 8, 2010, Jean Schmidt filed an eight-count defamation complaint in the Ohio Court of Common Pleas, Clermont County for these additional statements published by Krikorian that falsely accused Jean Schmidt of receiving money, directly or indirectly, from the Government of Turkey.

Jean Schmidt's campaign committee is not a party to this defamation action and Jean Schmidt's right to sue someone who defames her is not dependent upon her seeking or holding public office.

## ANALYSIS

### **I. TCA'S PAYMENTS FOR THE LEGAL FEES AT ISSUE WERE NOT CONTRIBUTIONS.**

The Complaint is based on the false premise that TCA's payments for the legal fees at issue were "contributions". They were not.

2 USC 431(8)(A) defines "contributions" as follows:

"The term 'contribution' includes –

- (i) any gift, subscription, loan advance, or deposit of money or anything of value made by any person *for the purpose of influencing any election for Federal office*; or
- (ii) the payment by any person of compensation for the personal services of another person which are *rendered to a political committee* without charge for any purpose." [Emphasis added.]

2 USC 441b(b)(2), similarly, defines "contributions" to include:

"any direct or indirect payment . . . *to any candidate, campaign committee, or political party or organization, in connection with any election*".

The TCA payments at issue do not satisfy either of these definitions.

#### **A. The legal fees were not paid "in connection with" an election or "for purposes of influencing" an election.**

The 2008 general election at which Krikorian made the false statements that were the subject of the OEC complaint was over months before the OEC case was initiated. The OEC complaint was not brought in order to influence the result of an election. Rather, Jean Schmidt's purpose in filing the OEC case to vindicate Jean Schmidt's reputation against false and malicious charges that she took bribes from a foreign government.

TCA did not pay lawyers to influence the results of an election. Rather TCA sought to defend the most recent victim of the character assassination tactics of the hate group with which

Krikorian was affiliated (ANCA) – just as TCA has done for others who have never sought public office. As indicated in TCA's response herein, TCA would have paid for the same legal representation whether Jean Schmidt ever ran for office again or not.

Moreover, this legal representation was not "in connection with" Jean Schmidt's election any more than the other post-election litigation expenses were that the Commission has found not to be "contributions" in Advisory Opinions such as AO 2003-15, 1993-15, 1990-1, 1981-16, 1983-37, 1983-30 and 1982-35.

Thus, TCA's payment of the legal fees does not meet the definition of "contribution" under either 2 USC 431(8)(A)(i) or 441b(b)(2).

**B. The legal fees were not paid for personal services rendered to a political committee without charge.**

TCA's payment of Jean Schmidt's lawyers also fails to meet the definition of "contribution" under 2 USC 431(8)(A)(ii).

TCA did not pay any legal fees for lawyers to represent Jean Schmidt's campaign committee, and the campaign committee was not a party to any of the relevant litigation. The nominal representation of Jean Schmidt's campaign committee in connection with defending a witness being deposed in the OEC matter was not compensated. No legal invoices were ever sent or paid for representing Jean Schmidt's campaign committee. The only services paid for by TCA were for personal services rendered to Jean Schmidt.

Indeed, the Report expressly found that the payment of these legal fees constituted a "gift to Representative [Jean] Schmidt" even though "Representative Schmidt lacked knowledge of the arrangement" between TCA and the lawyers associated with TALDF. Report, p. 3. That is, these were gifts to Jean Schmidt – not contributions to her campaign committee.

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In order to meet the definition of "contribution" under 2 USC 431(8)(A)(ii), the personal services must be rendered "without charge". As the Report indicates, Jean Schmidt never intended to accept these services "without charge" and, indeed, spent a considerable time working with the House Ethics Committee to determine whether and how these legal expenses could be paid by and through a legal expense trust. See, e.g., Report, pp. 476-477.

Thus, TCA's payment of the legal fees does not meet the definition of "contribution" under any of the statutory provisions.

**II. RESPONDENTS HAD NO KNOWLEDGE OF ANY "CONTRIBUTIONS" FROM TCA.**

Respondents never received notice from TCA that it had made an in-kind contribution to Jean Schmidt's campaign committee. Respondents never received a bill for the legal services at issue, and the House Ethics Committee found that Jean Schmidt did not even know that a "gift" to her had been made by TCA. See, e.g., Report, p. 8. For this reason alone, there can be no 2 USC 441b violation, since the prohibition is against "knowingly" accepting or receiving a corporate contribution. Similarly, there can be no finding of "knowing" or "willful" violation under 2 USC 437g.

**III. RESPONDENTS JOSEPH BRAUN AND PETER SCHMIDT ARE NOT PROPER PARTIES.**

The Complaint notes (at p. 2) that Joseph Braun has had no role with Jean Schmidt's campaign committee since 2008 and that Peter Schmidt has not been treasurer of Jean Schmidt's campaign committee since 2008.

While the Complaint alleges that Peter Schmidt has served as "assistant treasurer" since 2008, an assistant treasurer does not have the duty to file reports. 2 USC 434(a) imposes these



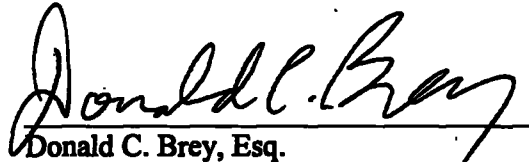
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duties upon the "treasurer". The Complaint makes no specific allegation that Peter Schmidt performed any act as assistant treasurer improperly.

Since the TCA payments at issue were first made in 2009, the status of Joseph Braun and Peter Schmidt in 2008 is irrelevant and they are not proper parties.

WHEREFORE, Respondents Rep. Jean Schmidt, Schmidt for Congress Committee, Joseph Braun, Phillip Greenberg and Peter Schmidt respectfully submit that the Complaint against them should be dismissed.

Respectfully submitted,



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Telephone: 614-221-4000  
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e-mail: dbrey@cwsllaw.com

Counsel for Respondents

BEFORE THE OHIO ELECTIONS COMMISSION

Jean Schmidt  
Schmidt for Congress  
8280 Montgomery Rd., Ste. 204  
Cincinnati, OH 45236

2009E-003

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APR 29 2009

OHIO ELECTIONS COMMISSION

v.

Mr. David Krikorian

Cincinnati, OH 45243-2206

COMPLAINT

I, Jean Schmidt, file this Complaint under Ohio Revised Code Section 3517.153 and aver the following under oath:

- 1) I have represented the Second Congressional District of Ohio in the United States Congress since January 2007.
- 2) I campaigned for re-election in 2008.
- 3) David Krikorian, running as an independent, was one of my opponents in the general election held on November 4, 2008.
- 4) Each of the false statements enumerated below were designed to promote his candidacy for Congress and to defeat my re-election bid.
- 5) I have never received a donation in order "to Deny the Genocide of Christian Armenians by Muslim Turks." I have never accepted anything of value in return for being influenced in the performance of an official act (including inaction), which would be a federal crime under 18 U.S.C. 201.
- 6) On his 2008 campaign website (<http://www.krikorianforcongress.com/genocide.php>) Mr. Krikorian asserted: "Representative Jean Schmidt Has Taken \$30,000 in Blood Money to Deny the Genocide of Christian Armenians by Muslim Turks." Exhibit 1.
- 7) Mr. Krikorian's statement quoted in paragraph 6 above was intentionally falsely stated facts in at least two respects in violation of Ohio Revised Code Section 3517.21(A)(10).



- 8) I have never "denied" an Armenian genocide. My position as a Member of Congress has consistently been that the subject is not a fit question for Congress; and, that based on my knowledge of the historical record I cannot, at present, characterize the tragic events of 1915 in World War I as an Armenian "genocide," which has a very strict meaning. As a Member of Congress, I have never voted on an Armenian genocide resolution. I support the formation of an international independent commission of experts to resolve the matter definitively.
- 9) Mr. Krikorian's campaign website undermines his own false accusation. The website recounts a statement in my office on March 29, 2007, which does not deny genocide, but expresses agnosticism: "At this time [Jean Schmidt] does not have enough information to characterize these deaths as genocide especially when those responsible are long dead." The website also quotes from a statement made in my office on May 11, 2007, in which I do not deny genocide, but make a different point about the exacting standards of proof counseling hesitation before leaping to a conclusion: "The United Nations describes genocide as carrying out acts intended to 'destroy, in whole or in part, a national, ethnic, racial, or religious group.' In this instance, it was very difficult to know intent."
- 10) On November 2, 2008, Mr. Krikorian addressed a letter to, "My Supporters and the People of the Second Congressional District." It contains several knowingly false statements of fact in violation of Ohio Revised Code Section 3517.21(A)(10). Exhibit 2.
- 11) Paragraph 2 of the letter asserts: "I demand [Jean Schmidt's] immediate withdrawal from this race and her apology to the people of the United States of America for the crime she has committed against our American soldiers and humanity by denying the undisputed facts of the Armenian Genocide."
- 12) As elaborated in paragraphs 8 and 9 of this Complaint, I have not "denied" the Armenian Genocide. (In addition, the "facts" are not "undisputed." Reputable American scholars who question the appropriateness of the genocide label for the tragic events of 1915-1916 include famed Middle East expert Bernard Lewis of Princeton University, the late Stanford Shaw of U.C.L.A., Justin McCarthy of the University of Louisville. Guenter Lewy of the University of Massachusetts, Norman Itzkowitz of Princeton University, Brian G. Williams of the University of Massachusetts, David Fromkin of Boston University, Avigdor Levy of Brandeis University, Michael M. Gueter of Tennessee Tech, Pierre Oberling of Hunter College, the late Roderic Davison of George Washington University, Michael Radu of Foreign Policy Research Institute, and military historian Edward J. Erickson. Outside of the United States yet more scholars have endorsed a contra-genocide analysis of the history of the Ottoman Armenians, among them Gilles Veinstein of the College de France, Stefano Trinchese of the University of Chieti, Augusto Sinagra of the University of Romae-Sapienza, Norman Stone of Bilkent University, and the historian Andrews Mango of the University of London).

13) Paragraph 3 of the November 2, 2008 letter repeats the false assertion that Jean Schmidt "deni[es]" the Armenian Genocide.

14) Paragraph 4 of the November 2, 2008 letter further repeats the false assertion that Jean Schmidt insanely "deni[es]...the Christian Armenian Genocide at the hands of the Muslim Ottoman Empire." It also largely repeats the doubly-false statement in Krikorian's website for the reasons set forth in paragraphs 8 and 9 of this Complaint: "Jean Schmidt has taken \$30,000 in blood money from Turkish sponsored political action committees to deny the slaughter of 1.5 million Armenian men, women, and children by the Ottoman Turkish Government during World War I." In addition, the statement makes the false assertion that I received campaign contributions from "Turkish government sponsored" political action committees. No political action committee that donated to my campaign was "Turkish government sponsored." True copies of the affidavits of Lincoln McCurdy and Demir Karsan, Treasurer and President of Turkish Coalition USA PAC and Turkish American Heritage PAC, respectively, are attached as Exhibit 3.

15) Paragraph 7 of the November 2, 2008 letter again falsely accuses me of "den[y]ing" the "Armenian genocide" for the reasons set forth in paragraphs 8 and 9 of this Complaint.

16) Paragraph 10 of the November 2, 2008 letter falsely asserts: "Jean Schmidt has taken \$30,000 in blood money from Turkish government sponsored political action committees and Turkish people in 2008 in exchange for helping them to cover-up the mass murder of 1.5 million Christians. This information is public record and can be found on the Federal Election Commission database at <http://www.FEC.gov>." Exhibit 4.

17) As set forth in paragraph 5 of this Complaint, I have never accepted a political contribution in return for being influenced in the performance of an official act (including inaction).

18) As set forth in paragraph 14, I did not receive any campaign contributions from political action committees "sponsored" by the Turkish government.

19) The website <http://www.FEC.gov> does not substantiate that political action committees that made contributions to me were sponsored by the Turkish government, nor does it identify campaign donors by ancestry. In other words, the website does not corroborate that "Turkish people" made donations to my 2008 congressional campaign.

20) It would be a crime under federal law for the Turkish government (or any foreign national) to fund a political action committee that made donations to a federal candidate seeking election to Congress, among other federal offices. 2 U.S.C. 437 g(d), 441e.

21) It would be a crime under federal law for "Turkish people" to make contributions to federal political campaigns for Congress, among other federal offices, if the donor were not an American citizen or permanent resident alien. 2 U.S.C 437 g(d), 441e(b).

22) Paragraph 14 of the November 2, 2008 letter repeats the false accusation that Jean Schmidt has "deni[ed]" the Armenian genocide for the reasons set forth in paragraphs 8 and 9 of this Complaint. Exhibit 2.

23) I debated Mr. Krikorian on three occasions during the 2008 campaign. In none of those debates did he assert that I had solicited or received \$30,000 from Turkish Americans, Turkish people, or Turkish political action committees for being influenced in the performance of my official duties as a Member of Congress regarding Armenian genocide resolutions.

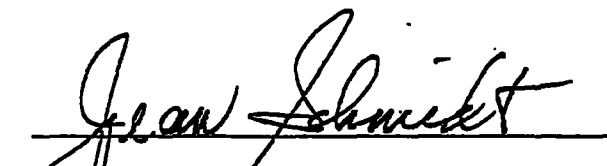
24) I have spoken to Mr. Krikorian face-to-face on 1 occasion in my congressional office. In that meeting he did not accuse me of receiving campaign contributions in return for being influenced in the performance of my official duties as a Member of Congress.

25) Neither Mr. Krikorian nor his agents ever inquired of me, my staff, or my campaign committee as to whether I had made any promises or commitments to being influenced in the performance of my official duties about the Armenian genocide resolution in return for campaign contributions from "Turkish people" or "Turkish government sponsored political action committees."

26) In Mr. Krikorian's email exchanges with Ben LaRocco of my staff, it was related to him that my knowledge of the facts and the currently available evidence had not convinced me of the Armenian genocide claim. Exhibit 5.

Wherefore, Jean Schmidt for Congress requests that the Commission conduct a hearing and issue a finding that David Krikorian violated Ohio Revised Code Section 3517.21(A)(10) during the 2008 general election campaign in the Second Congressional District of Ohio by knowingly making false statements of fact as set forth in this Complaint, to issue a public reprimand, and to grant such other relief that the Commission find just and equitable in the circumstances.

Further affiant sayeth not.

  
Jean Schmidt

District of Columbia  
On this 2<sup>nd</sup> day of April, 2009  
Jean Schmidt  
personally appeared before me and acknowledged  
that he/she executed the foregoing instrument.  
Marguerita Parish Hardy  
Marguerita Parish Hardy  
My commission expires October 31, 2011

# EXHIBIT 1

HOME EVENTS ABOUT DAVID VIEWS GET INVOLVED DONATE RESOURCES CONTACT

DAVID  
KRIKORIAN



RING THE BELL ★ VOTE INDEPENDENT

Representative  
**Jean Schmidt**  
Has Taken  
**\$30,000**  
In Blood / Money to to  
Deny the Genocide  
of Christian Armenians  
by Muslim Turks

"The Armenian Genocide has been a prelude to the horrors which followed: the two world wars, innumerable regional conflicts and deliberately organized campaigns of extermination that have ended the lives of millions of believers."

-Pope John Paul II (September 26, 2001)

"At this time she does not have enough information to characterize these deaths as genocide especially when those responsible are long dead."

-Jean Schmidt's office (March 29, 2007)

"Like the genocide of the Armenians before it, and the genocide of the Cambodians which followed it — and like too many other such persecutions of too many other peoples — the lessons of the Holocaust must never be forgotten."

-Ronald Reagan (April 22, 1981)

"The question comes to the definition of genocide, and I don't think we are comfortable making that attribution at this time."





## EXHIBIT 2

« JOHN BOEHNER ENDORSES PART OF KRIKORIAN PLAN  
NEWS DEMOCRAT ENDORSES KRIKORIAN! »

## KRIKORIAN LETTER REGARDING ARMENIAN GENOCIDE

LETTER - November 2, 2008.  
 Written by David Krikorian.

To My Supporters and the People of the Second Congressional District,

I ask the people of Ohio's second congressional district to ask themselves if our Representative should be taking money from a foreign government that is killing our soldiers?

The linked flyer is being widely distributed across the second district in the last days of this campaign season to expose Jean Schmidt as a betrayer of American history and her Christian faith. With her actions, Jean Schmidt has proven that she is unfit for service at any level in the U.S. Government, let alone the U.S. House of Representatives. I demand her immediate withdrawal from this race and her apology to the people of the United States of America for the crime she has committed against our American soldiers and humanity by denying the undisputed facts of the Armenian Genocide. Jean Schmidt is a selfish person and should seek the help of professional counseling.

American forces battling Al-Qaida in Afghanistan are encountering rising numbers of Turkish militants. The Associated Press reported that "The story of Turkish involvement in transnational jihadism is one of the best kept stories of the war on terror. .... The local Afghans whom I talked to claim that the Turks and other foreigners are more prone to suicidal assaults than the local Taliban." Another report cites the fact that Turk suicide bomber Coney Çifçi was lauded by Turkish militant Islamic web sites as a hero for killing 70 U.S. soldiers in Afghanistan in March.

My campaign for U.S. Representative has been entirely focused on our country's economic security. Of the three candidates in this race, there can be no question as to who is best qualified to lead our district during this great economic and financial crisis. I want to take this opportunity, however, to set the record straight on something I have not spoken publicly about and that is Jean Schmidt's denial of the Armenian Genocide and why I supported my Democratic opponent in 2006.

Republican controlled media outlets in southwest Ohio have correctly reported that I contributed to two Democrats that sought their party's nomination in 2006 to oppose Jean Schmidt in the general election. While that is indeed true, it is important to understand that my motivation for doing so was entirely the result of Jean Schmidt's insane denial of the Christian Armenian Genocide at the hands of the Muslim Ottoman Empire. Jean Schmidt has taken \$30,000 in blood money from Turkish government sponsored political action committees to deny the slaughter of 1.5 million Armenian men, women and children by the Ottoman Turkish Government during World War I.

Both sets of my grandparents are survivors of this first Holocaust of the 20th century and came to America in the early 1920's. Most of their family members at the time were murdered.

The facts of the Armenian genocide are universally accepted by nations around the world, prominent scholars and statesmen and 40 U.S. states including Ohio. The only deniers of this great tragedy which led to the Holocaust of the Jews by Nazi Germany are the Turkish Government and certain members of the United States Congress including Jean Schmidt. If your family and race were murdered and brought to the brink of extermination, you would have done the exact same thing, you would have supported anyone running against Jean Schmidt.

Here are some facts:

The Armenian Genocide is officially recognized by 20 nations including Argentina, Austria, Belgium, Canada, Chile, France, Germany, Greece, Italy, Lebanon, Netherlands, Poland, Russia, Switzerland and the Vatican City among others. In fact it is a CRIME to deny the Armenian Genocide in France and Switzerland punishable by incarceration.

Jean Schmidt has taken \$30,000 in blood money from Turkish government sponsored political action committees and Turkish people in 2008 in exchange for helping them to cover-up the mass murder of 1.5 million Christians. This information is public record and can be found on the Federal Elections Commission database at <http://www.FEC.gov>.

Jean Schmidt says that "at this time she does not have enough information to characterize these deaths as genocide especially since those responsible are long since dead" Jean Schmidt's office March 29, 2007.

Many notable scholars and statesmen have officially recognized the Armenian Genocide including:

- President Ronald Reagan
- Pope John Paul II
- Holocaust survivor and Nobel Lauriat Elie Wiesel
- U.S. Ambassador to the Ottoman Empire Henry Morgenthau
- Sir Winston Churchill
- Governor Ted Strickland
- Representative Steve Chabot

Jean Schmidt says: "The question comes to the definition of genocide and I don't think we are comfortable making that attribution at this time" Jean Schmidt's office, March 30, 2007.

Jean Schmidt is a self-serving politician and an embarrassment to her district and to the United States of America. The people of Ohio's second district will, if they elect her on November 4th, condone her denial of the Genocide of 1.5 million Christians. And, in so doing, be guilty of a crime against humanity as the cover-up is just as bad as the crime. It is not enough to vote party like mindless sheep. Vote conscience and ideal and stand up for the values you claim to hold. If you don't, you are merely a barking dog and God is indeed watching.

Jean Schmidt MUST GO and WE the people must do it. Because you are Americans and because you are human beings and because you are Christians.

David Krikorian

This entry was posted on Sunday, November 2nd, 2008 at 8:22 pm and is filed under Uncategorized. You can follow any responses to this entry through the RSS 2.0 feed. Both comments and pings are currently closed.

Comments are closed.

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## EXHIBIT 4





IN THE OHIO ELECTIONS COMMISSION

**JEAN SCHMIDT**  
Schmidt for Congress  
8280 Montgomery Road, Suite 204  
Cincinnati, Ohio 45236

Complainant,

vs.

Case No. **2009E-012**

**DAVID KRIKORIAN**

Cincinnati, Ohio 45243-2206

Respondent.

**COMPLAINT**

Jean Schmidt, being first duly sworn, deposes and says as follows:

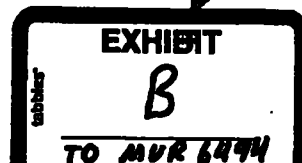
1. I have represented the Second Congressional District of Ohio in the United States Congress since January 2007.
2. I was a candidate for reelection in 2008.
3. Respondent, David Krikorian, was one of the candidates opposing me in the campaign for member of Congress from Ohio's Second Congressional District, which was decided at the November 4, 2008, general election.
4. On or about November 2, 2008, as part of his campaign, Respondent David Krikorian drafted and disseminated the letter attached hereto as Exhibit A.
5. Exhibit was designed to influence the result of the election by urging my defeat and by promoting the election of another candidate.
6. Exhibit A contains the following false statement:

"I ask the people of Ohio's second congressional district to ask themselves if our Representative should be taking money from a foreign government that is killing our soldiers?"

**RECEIVED**

**JUL 21 2009**

**OHIO ELECTIONS COMMISSION**



7. The above quoted statement is not the only falsehood contained in the attached Exhibit A. Other false statements in the attached Exhibit A, are the subject of pending Ohio Elections Commission Case No. 2009E-003.

8. The above quoted sentence falsely accuses me, Jean Schmidt, of "taking money from a foreign government that is killing our soldiers". The context is clear.

9. The above quoted statement is false.

10. David Krikorian either knows that the above quoted statement is false or has made this false statement with reckless disregard of its truth or falsity.

11. Moreover, the sentence immediately following the above quoted statement states that "The linked flyer is being widely distributed across the second district in the last days of this campaign season to expose Jean Schmidt as a betrayer of American history and her Christian faith." The linked flyer to which Exhibit A refers is attached hereto as Exhibit B. Thus, the recipients of Exhibit A will understand that Jean Schmidt has taken \$30,000 in blood money from a foreign government that is killing our soldiers.

10. Neither I nor my Campaign Committee have ever "tak[en] money from a foreign government", let alone from "a foreign government that is killing our soldiers".

11. It is a violation of R.C. 3517.21(B)(10) to:

"Post, publish, circulate, distribute, or otherwise disseminate a false statement concerning a candidate, either knowing the same to be false or with reckless disregard of whether it was false or not, if the statement is designed to promote the election, nomination, or defeat of the candidate."

12. David Krikorian has violated R.C. 3517.21(B)(10)



WHEREFORE, Complainant requests that Respondent be found in violation of R.C.

3517.21(B)(10), and that he be appropriately sanctioned.

Further Affiant sayeth nought.

  
Jean Schmidt

Sworn to before me and subscribed in my presence, this 14<sup>th</sup> day of July, 2009.

  
Notary Public

Sandra D. Bean  
Notary Public, District of Columbia  
My Commission Expires 7/14/2013

**« JOHN BOEHNER ENDORSES PART OF KRIKORIAN PLAN  
NEWS DEMOCRAT ENDORSES KRIKORIAN! »**

## **KRIKORIAN LETTER REGARDING ARMENIAN GENOCIDE**

LETTER - November 2, 2008.  
Written by David Krikorian.

To My Reporters and the People of the Second Congressional District,

I ask the people of Ohio's second congressional district to ask themselves if our Representative should be taking money from a foreign government that is killing our soldiers?

The linked flyer is being widely distributed across the second district in the last days of this campaign season to expose Jean Schmidt as a betrayer of American history and her Christian faith. With her actions, Jean Schmidt has proven that she is unfit for service at any level in the U.S. Government, let alone the U.S. House of Representatives. I demand her immediate withdrawal from this race and her apology to the people of the United States of America for the crime she has committed against our American soldiers and humanity by denying the undisputed facts of the Armenian Genocide. Jean Schmidt is a selfish person and should seek the help of professional counseling.

American forces battling Al-Qaida in Afghanistan are encountering rising numbers of Turkish militants. The Associated Press reported that "The story of Turkish involvement in transnational jihadism is one of the best kept stories of the war on terror.... The local Afghans whom I talked to claim that the Turks and other foreigners are more prone to suicidal assaults than the local Taliban." Another report cites the fact that Turk suicide bomber Cüneyt Çiftçi was lauded by Turkish militant Islamic web sites as a hero for killing 70 U.S. soldiers in Afghanistan in March.

My campaign for U.S. Representative has been entirely focused on our country's economic security. Of the three candidates in this race, there can be no question as to who is best qualified to lead our district during this great economic and financial crisis. I want to take this opportunity, however, to set the record straight on something I have not spoken publicly about and that is Jean Schmidt's denial of the Armenian Genocide and why I supported my Democratic opponent in 2006.

Republican controlled media outlets in southwest Ohio have correctly reported that I contributed to two Democrats that sought their party's nomination in 2006 to oppose Jean Schmidt in the general election. While that is indeed true, it is important to understand that my motivation for doing so was entirely the result of Jean Schmidt's insane denial of the Christian Armenian Genocide at the hands of the Muslim Ottoman Empire. Jean Schmidt has taken \$30,000 in blood money from Turkish government sponsored political action committees to deny the slaughter of 1.5 million Armenian men, women and children by the Ottoman Turkish Government during World War I.

Both sets of my grandparents are survivors of this first Holocaust of the 20th century and came to America in the early 1920's. Most of their family members at the time were murdered.

The facts of the Armenian genocide are universally accepted by nations around the world, prominent scholars and statesmen and 40 U.S. states including Ohio. The only deniers of this great tragedy which led to the Holocaust of the Jews by Nazi Germany are the Turkish Government and certain members of the United States Congress including Jean Schmidt. If your family and race were murdered and brought to the brink of extermination, you would have done the exact same thing, you would have supported anyone running against Jean Schmidt.

Here are some facts:

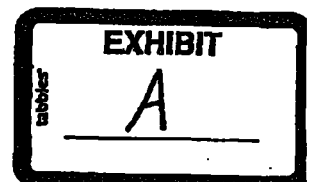
The Armenian Genocide is officially recognized by 20 nations including Argentina, Austria, Belgium, Canada, Chile, France, Germany, Greece, Italy, Lebanon, Netherlands, Poland, Russia, Switzerland and the Vatican City among others. In fact it is a CRIME to deny the Armenian Genocide in France and Switzerland punishable by incarceration.

Jean Schmidt has taken \$30,000 in blood money from Turkish government sponsored political action committees and Turkish people in 2008 in exchange for helping them to cover-up the mass murder of 1.5 million Christians. This information is public record and can be found on the Federal Elections Commission database at <http://www.FEC.gov>.

Jean Schmidt says that: "at this time she does not have enough information to characterize these deaths as genocide especially since those responsible are long since dead" Jean Schmidt's office March 29, 2007.

Many notable scholars and statesman have officially recognized the Armenian Genocide including:

- President Ronald Reagan
- Pope John Paul II
- Holocaust survivor and Nobel Laureate Elie Wiesel
- U.S. Ambassador to the Ottoman Empire Henry Morgenthau
- Sir Winston Churchill
- Governor Ted Strickland
- Representative Steve Chabot



**Jean Schmidt is a self-serving politician and an embarrassment to her district and to the United States of America. The people of Ohio's second district will, if they elect her on November 4th, condone her denial of the Genocide of 1.5 million Christians. And, in so doing, be guilty of a crime against humanity as the cover-up is just as bad as the crime. It is not enough to vote party like mindless sheep. Vote conscience and ideal and stand up for the values you claim to hold. If you don't, you are merely a barking dog and God is indeed watching.**

**David Krikerian**

**Comments are closed.**

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HOME EVENTS ABOUT DAVID VIEWS GET INVOLVED DONATE RESOURCES CONTACT

DAVID  
KRIKORIAN



RING THE BELL ★ VOTE INDEPENDENT

Representative  
**Jean Schmidt**  
Has Taken  
**\$30,000**  
In Blood Money to  
Deny the Genocide  
of Christian Armenians  
by Muslim Turks

"The Armenian Genocide has been a prelude to the horrors which followed: the two world wars, innumerable regional conflicts and deliberately organized campaigns of extermination that have ended the lives of millions of believers."

-Pope John Paul II (September 26, 2001)

"At this time she does not have enough information to characterize these deaths as genocide especially when those responsible are long dead."

-Jean Schmidt's office (March 29, 2007)

"Like the genocide of the Armenians before it, and the genocide of the Cambodians which followed it — and like too many other such persecutions of too many other peoples — the lessons of the Holocaust must never be forgotten."

-Ronald Reagan (April 22, 1981)

"The question comes to the definition of genocide, and I don't think we are comfortable making that attribution at this time."

EXHIBIT

B

tabbies

-Jean Schmidt's office (March 30, 2007)

"Who, after all, speaks today of  
the annihilation of the Armenians?"

-Adolph Hitler

"The United Nations describes genocide as carrying  
out acts intended "to destroy, in whole or in part, a  
national, ethnic, racial or religious group." In this  
instance it was very difficult to know intent."

-Jean Schmidt's office (May 11, 2007)

**SAY NO TO JEAN SCHMIDT**

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7894 Camargo Road, Cincinnati, OH 45243

513-271-2987

RingTheBell@KrikorianForCongress.com

1004710010001

IN THE OHIO ELECTIONS COMMISSION

JEAN SCHMIDT,

Complainant,

v.

DAVID KRIKORIAN,

CINCINNATI OH  
45243 Respondent.

OEC Case No. 2009E-003

Common Pleas Case No.

Judge

Case Classification F

(Administrative Appeal)

09 CVF 11 17707

NOTICE OF APPEAL IN CASE NO. 2009E-003

In accordance with R.C. 119.12, Respondent David Krikorian, by and through counsel, appeals to the Court of Common Pleas of Franklin County, Ohio, from the Order of the Ohio Elections Commission ("OEC") dated November 13, 2009 ("Order"). A copy of the Order was mailed by the OEC to Mr. Krikorian and his counsel on November 13, 2009, and is attached as Exhibit 1.

In the Order, the OEC determined that certain political statements made by Mr. Krikorian during the course of his 2008 candidacy for the office of United States Representative from the Second Congressional District of the State of Ohio violated R.C. § 3517.21(B)(10). The political statements for which the OEC found violations, and from which Mr. Krikorian appeals, read as follows:

"Jean Schmidt has taken \$30,000 in blood money from Turkish government sponsored political action committees to deny the slaughter of 1.5 million Armenian men, women and children by the Ottoman Turkish Government during World War I."

"This information is public record and can be found on the Federal Elections Commission database at <http://www.FEC.gov>." (As it relates to the reference in this statement by Mr. Krikorian that "Turkish government sponsored political action committees gave \$30,000 to Jean Schmidt and or to Schmidt for Congress campaign committee.")

As a penalty for the purported violations, the OEC determined that it would issue a letter of public reprimand to Mr. Krikorian.



COMMON PLEAS COURT  
FRANKLIN CO. OHIO  
2009 NOV 27 PM 4:14  
CLERK OF COURTS

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The OEC's Order is not supported by reliable, probative, and substantial evidence, and is not in accordance with law for, *inter alia*, the following reasons:

1. The statute under which the OEC purported to act and which Mr. Krikorian was found to have violated – R.C. § 3517.21(B)(10) (the "Statute") – is preempted by the Federal Election Campaign Act, 2 U.S.C. § 431 *et seq.* ("FECA"). FECA occupies the field of federal elections and the conduct of federal campaigns. Because the Statute attempts to regulate political speech during the course of a campaign for federal office, FECA preempts the Statute.
2. The Statute, both on its face and as interpreted, applied, and enforced against Mr. Krikorian, violates the First Amendment to the United States Constitution because, *inter alia*:
  - a. The Statute operates as an impermissible prior restraint in prohibiting Mr. Krikorian and other candidates for elected office from engaging in core political speech. In encompassing speech clearly protected by the First Amendment, the Statute's scope extends too broadly and causes candidates like Mr. Krikorian to self-censor their political speech.
  - b. The Statute is a content-based regulation of speech that fails strict scrutiny. The Statute is content based because, among other things, whether it applies to particular speech depends entirely on whether the speech is made during the course of a political campaign, whether the speech concerns a candidate, whether the speech is intended to affect the outcome of the campaign, and whether the speech is designed to promote the election, nomination, or defeat of the candidate.
  - c. The Statute is not justified by a compelling state interest, nor is it narrowly tailored or necessary to further any such state interest. Specifically, the Statute contains no requirement that prohibited false statements be harmful to a candidate's reputation, *i.e.*, defamatory under the requisite standard of *New York Times v. Sullivan*, 376 U.S. 254 (1964) and its progeny. The Statute fails to require evidence of actual injury or damages for an alleged false statement concerning a candidate to be actionable.
3. The Statute, both on its face and as interpreted, applied, and enforced against Mr. Krikorian, violates the procedural and due process guarantees of the Fourteenth Amendment to the United States Constitution by, *inter alia*:
  - a. Depriving Mr. Krikorian of the right to fully present evidence in his defense, and unreasonably hindering discovery by limiting depositions.
  - b. Permitting censorship of core political speech by five unelected OEC officials, two of whom were not lawyers with formal legal training yet were passing judgment on First Amendment issues in a federal election campaign.

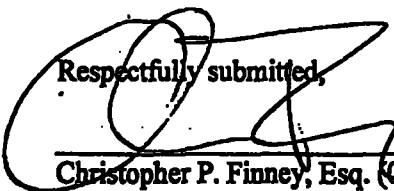
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- c. Failing to provide a mechanism for a new trial on appeal from the decision of unelected OEC officials, two of whom were not lawyers with formal legal training.
  - d. Applying an incorrect legal standard to find a violation of the Statute, rather than the requisite standard of "actual malice."
  - e. Without any prior notice to Mr. Krikorian or his counsel, bifurcating the allegations against Plaintiff at issue, resulting in prejudice to Mr. Krikorian's ability to present his defense.
  - f. Allowing the complainant, Jean Schmidt, to amend her complaint to allege a violation of the code provision at issue rather than citing to a non-existent code provision – R.C. § 3517.21(A)(10) – after she had concluded her case-in-chief and after Mr. Krikorian had moved to dismiss the case. than
4. The Order is unjust, contrary to law, and is not supported by reliable, probative, and substantial evidence presented at the hearings in this matter and contained in the official Record of the captioned matter.

WHEREFORE, Mr. Krikorian requests:

- 1. An oral hearing on the subject appeal as provided by R.C. 119.12;
- 2. That the Court reverse, vacate, or modify the Order for the reasons set forth above and to be presented more fully to the Court during this appeal;
- 3. That the Court compensate Mr. Krikorian for the fees incurred by him with respect to this appeal in accordance with R.C. 119.12 and 2335.39;
- 4. That the Court declare unconstitutional, both facially and as-applied, R.C. § 3517.21(B)(10), and further declare the statute unlawful and invalid;
- 5. That the Court issue an injunction enjoining the Ohio Elections Commission, its officers, agents, employees, and all those persons in active concert or participation with it, from enforcing the unconstitutional portions of the Ohio Revised Code and corresponding regulations, as set forth above.
- 6. That the Court award such further legal or equitable relief to which Mr. Krikorian may be entitled.



Respectfully submitted,

  
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Joshua B. Bolinger, Esq. (0079594)  
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(213) 625-1600 (Facsimile)  
[mark@geragos.com](mailto:mark@geragos.com)

*\*Pro hac vice motion forthcoming*

**CERTIFICATE OF SERVICE**

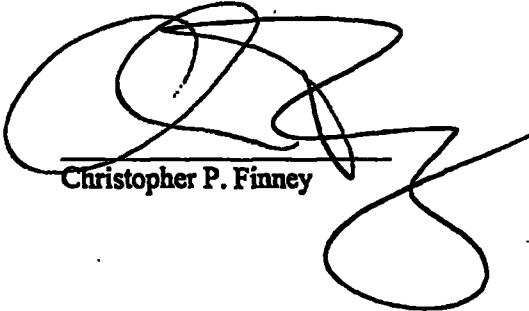
The undersigned certifies that a true and accurate copy of the foregoing notice of appeal was served on the following counsel by regular U.S. mail on this 25th day of November, 2009:

Donald C. Brey, Esq.,  
CHESTER, WILLCOX, & SAXBE LLP  
65 East State Street, Ste. 1000  
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*Attorney for Complainant Jean Schmidt*

David Saltzman, Esq.  
SALTZMAN & EVINCH, PC  
655 15<sup>th</sup> Street, N.W.  
Suite 225-F  
Washington, D.C. 20005  
*Attorney for Complainant Jean Schmidt*

Craig A. Calcaterra  
Assistant Attorney General  
Constitutional Offices Section  
30 East Broad Street, 16<sup>th</sup> Floor  
Columbus, Ohio 43215-3428  
*Attorney for the Ohio Elections Commission*



Christopher P. Finney

## Exhibit 1

1004743610644



## Ohio Elections Commission

21 West Broad Street, Suite 600

Columbus, Ohio 43215

614-466-3205

[www.state.oh.us/elc](http://www.state.oh.us/elc)

November 13, 2009

Charles Calvert  
Chairman

John R. Mroczkowski  
Vice-Chairman

Danielle R. Blue

Bryan Fehmet

Harvey H. Shapiro

Larry Wolpert

Philip C. Richter  
Executive Director

Per (R34) 728-9408

Case No. 2009E-003  
Schmidt, et al. v. Krikorian  
Page 1 of 3

CHRISTOPHER FINNEY, ESQ  
JOSHUA BOLINGER, ESQ  
2623 ERIE AVE.  
CINCINNATI, OH 45208

Please be advised that on, 10/1/2009 after careful consideration of the evidence, the Ohio Elections Commission adopted the following finding(s) in the above referenced matter:

### THE COMMISSION ALLOWED THE FOLLOWING STATEMENTS TO BE WITHDRAWN BY THE COMPLAINANT:

- 1.) "Representative Jean Schmidt has taken \$30,000 in blood money to deny the Genocide of Christian Armenians by Muslim Turks.
- 2.) I demand her [Jean Schmidt] immediate withdrawal from this race and her apology to the people of the United States of America for the crime she has committed against our American soldiers and humanity by denying the undisputed facts of the Armenian Genocide.
- 3.) ... Jean Schmidt's denial of the Armenian Genocide ...
- 4.) ... Jean Schmidt's insane denial of the Christian Armenian Genocide at the hands of the Muslim Ottoman Empire.
- 6.) The facts of the Armenian Genocide are universally accepted by nations around the world, prominent scholars and statesmen and 40 U.S. states including Ohio. The only deniers of this great tragedy which led to the Holocaust of the Jews by Nazi Germany are the Turkish Government and certain member of the United States Congress including Jean Schmidt.

THE COMMISSION FOUND NO VIOLATION OF R.C.  
§3517.21(B)(10) AS TO THE FOLLOWING STATEMENT AS IT  
RELATES TO THE REFERENCE IN THIS STATEMENT TO THE  
ASSERTION THAT "Turkish people gave \$30,000 TO Jean Schmidt  
and or to Schmidt for Congress campaign committee":

- 8.) This information is public record and can be found on the Federal Elections Commission database at <http://www.FEC.gov>.  
(as this statement references facts that support the statements that Turkish people donated \$30,000.)

**AN ADMINISTRATIVE DISMISSAL WAS DECLARED AS TO  
THE STATEMENT:**

7.) "Jean Schmidt has taken \$30,000 in blood money from Turkish government sponsored political action committees and Turkish people in 2008 in exchange for helping them to cover-up the mass murder of 1.5 million Christians."

**THE COMMISSION FOUND A VIOLATION OF R.C.  
§3517.21(B)(10) BY CLEAR AND CONVINCING EVIDENCE  
AS TO THE STATEMENT:**

5.) "Jean Schmidt has taken \$30,000 in blood money from Turkish government sponsored political action committees to deny the slaughter of 1.5 million Armenian men, women and children by the Ottoman Turkish Government during World War I."

**THE COMMISSION FOUND A VIOLATION OF R.C.  
§3517.21(B)(10) BY CLEAR AND CONVINCING EVIDENCE AS  
TO THE FOLLOWING STATEMENT AS IT RELATES TO THE  
REFERENCE IN THIS STATEMENT TO THE ASSERTION THAT  
"Turkish government sponsored political action committees gave  
\$30,000 to Jean Schmidt and or to Schmidt for Congress campaign  
committee":**

8.) This information is public record and can be found on the Federal Elections Commission database at <http://www.FEC.gov>.  
(as this statement references facts that support the statements that Turkish government sponsored political action committees donated \$30,000.)

**AS A PENALTY FOR THE VIOLATIONS FOUND BY THE  
COMMISSION IN THIS CASE, THE COMMISSION  
DETERMINED THAT THERE WAS GOOD CAUSE PRESENT  
NOT TO REFER THE MATTER FOR FURTHER PROSECUTION  
BUT INSTEAD TO ISSUE A LETTER OF PUBLIC REPRIMAND.**

If the decision in this case involves the imposition of a specific fine amount, all fine and filing requirements must be complied with no later than 30 days after the date of this letter. Payment should be made payable and sent to the Ohio Elections Commission at the above address.

160443061646

If the disposition of this case involves a daily fine amount, you must contact the office in which you file your campaign finance reports and file the required report. In addition, you must file a notarized statement with the Commission in order to have the daily fine reconsidered. The filings and affidavit must be received within 30 days after the date of this letter. All properly notarized affidavits must include a statement above the notary public's signature that the document was sworn to and subscribed in the presence of the notary public and the date on which it was done.

If the decision in this case does not involve the imposition of a fine, there is no further action required of you by the Commission.

If the decision in this case is adverse to you, this case may be appealed pursuant to Ohio Revised Code §119. A Notice of Appeal must be filed in 15 days. The Notice must be filed with the Commission and also at the Clerk's office for the Franklin County Court of Common Pleas.

In all cases, please use the OEC Case No. listed at the top of this letter when corresponding with Commission. If you have any question, please feel free to contact the Commission staff at (614) 466-3205.

Very truly yours,  
Philip C. Richter  
Staff Attorney

IN THE OHIO ELECTIONS COMMISSION

JEAN SCHMIDT,

Complainant,

v.

DAVID KRIKORIAN,

CINCINNATI OH 45243  
Respondent.

OEC Case No. 2009E-012

Common Pleas Case No. \_\_\_\_\_

Judge \_\_\_\_\_

Case Classification F  
(Administrative Appeal)

COMMON PLEAS COURT  
FRANKLIN CO. OHIO  
2009 NOV 27 PM 4:14  
CLERK OF COURTS

NOTICE OF APPEAL IN CASE NO. 2009E-012

In accordance with R.C. 119.12, Respondent David Krikorian, by and through counsel, appeals to the Court of Common Pleas of Franklin County, Ohio, from the Order of the Ohio Elections Commission ("OEC") dated November 13, 2009 ("Order"). A copy of the Order was mailed by the OEC to Mr. Krikorian and his counsel on November 13, 2009, and is attached as Exhibit 1.

In the Order, the OEC determined that a certain political statement made by Mr. Krikorian during the course of his 2008 candidacy for the office of United States Representative from the Second Congressional District of the State of Ohio violated R.C. § 3517.21(B)(10). The political statement for which the OEC found a violation reads as follows: "I ask the people of Ohio's second congressional district to ask themselves if our Representative should be taking money from a foreign government that is killing our soldiers?" As a penalty for the purported violation, the OEC determined that it would issue a letter of public reprimand to Mr. Krikorian.

The OEC's Order is not supported by reliable, probative, and substantial evidence, and is not in accordance with law for, *inter alia*, the following reasons:

1. The statute under which the OEC purported to act and which Mr. Krikorian was found to have violated – R.C. § 3517.21(B)(10) (the "Statute") – is preempted by the Federal Election Campaign Act, 2 U.S.C. § 431 *et seq.* ("FECA"). FECA occupies the field of federal elections and the conduct of federal campaigns. Because the Statute attempts to



regulate political speech during the course of a campaign for federal office, FECA preempts the Statute.

2. The Statute, both on its face and as interpreted, applied, and enforced against Mr. Krikorian, violates the First Amendment to the United States Constitution because, *inter alia*:

- a. The Statute operates as an impermissible prior restraint in prohibiting Mr. Krikorian and other candidates for elected office from engaging in core political speech. In encompassing speech clearly protected by the First Amendment, the Statute's scope extends too broadly and causes candidates like Mr. Krikorian to self-censor their political speech.
- b. The Statute is a content-based regulation of speech that fails strict scrutiny. The Statute is content based because, among other things, whether it applies to particular speech depends entirely on whether the speech is made during the course of a political campaign, whether the speech concerns a candidate, whether the speech is intended to affect the outcome of the campaign, and whether the speech is designed to promote the election, nomination, or defeat of the candidate.
- c. The Statute is not justified by a compelling state interest, nor is it narrowly tailored or necessary to further any such state interest. Specifically, the Statute contains no requirement that prohibited false statements be harmful to a candidate's reputation, *i.e.*, defamatory under the requisite standard of *New York Times v. Sullivan*, 376 U.S. 254 (1964) and its progeny. The Statute fails to require evidence of actual injury or damages for an alleged false statement concerning a candidate to be actionable.

3. The Statute, both on its face and as interpreted, applied, and enforced against Mr. Krikorian, violates the procedural and due process guarantees of the Fourteenth Amendment to the United States Constitution by, *inter alia*:

- a. Depriving Mr. Krikorian of the right to fully present evidence in his defense, and unreasonably hindering discovery by limiting depositions.
- b. Permitting censorship of core political speech by five unelected OEC officials, two of whom were not lawyers with formal legal training yet were passing judgment on First Amendment issues in a federal election campaign.
- c. Failing to provide a mechanism for a new trial on appeal from the decision of unelected OEC officials, two of whom were not lawyers with formal legal training.
- d. Applying an incorrect legal standard to find a violation of the Statute, rather than the requisite standard of "actual malice."



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- e. Without any prior notice to Mr. Krikorian or his counsel, bifurcating the allegations against Plaintiff at issue, resulting in prejudice to Mr. Krikorian's ability to present his defense.
  - f. Allowing the complainant, Jean Schmidt, to amend her complaint to allege a violation of the code provision at issue rather than citing to a non-existent code provision -- R.C. § 3517.21(A)(10) -- after she had concluded her case-in-chief and after Mr. Krikorian had moved to dismiss the case.
4. The Order is unjust, contrary to law, and is not supported by reliable, probative, and substantial evidence presented at the hearings in this matter and contained in the official Record of the captioned matter.

WHEREFORE, Mr. Krikorian requests:

- 1. An oral hearing on the subject appeal as provided by R.C. 119.12;
- 2. That the Court reverse, vacate, or modify the Order for the reasons set forth above and to be presented more fully to the Court during this appeal;
- 3. That the Court compensate Mr. Krikorian for the fees incurred by him with respect to this appeal in accordance with R.C. 119.12 and 2335.39;
- 4. That the Court declare unconstitutional, both facially and as-applied, R.C. § 3517.21(B)(10), and further declare the statute unlawful and invalid;
- 5. That the Court issue an injunction enjoining the Ohio Elections Commission, its officers, agents, employees, and all those persons in active concert or participation with it, from enforcing the unconstitutional portions of the Ohio Revised Code and corresponding regulations, as set forth above.
- 6. That the Court award such further legal or equitable relief to which Mr. Krikorian may be entitled.

Respectfully submitted,

Christopher P. Finney, Esq. (0038998)  
Joshua B. Bolinger, Esq. (0079594)  
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[mark@geragos.com](mailto:mark@geragos.com)

\*Pro hac vice motion forthcoming

**CERTIFICATE OF SERVICE**

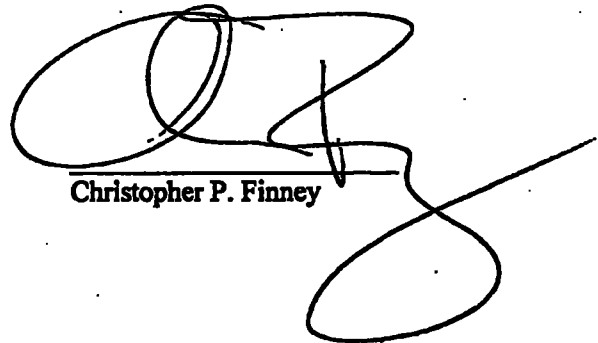
The undersigned certifies that a true and accurate copy of the foregoing notice of appeal was served on the following counsel by regular U.S. mail on this 25th day of November, 2009:

Donald C. Brey, Esq.,  
CHESTER, WILLCOX, & SAXBE LLP  
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*Attorney for Complainant Jean Schmidt*

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*Attorney for the Ohio Elections Commission*



Christopher P. Finney

## Exhibit 1

